IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 21-0899

(Underlying Mingo County Civil Action No. 21-C-21)

THORNHILL MOTOR CAR, INC. d/b/a/
THORNHILL CHRYSLER DODGE JEEP
RAM,

Petitioners/ Defendants Below,

v.

THE HONORABLE MIKI THOMPSON,
Judge of the 30th Judicial Circuit, and MOORE CHRYSLER, INC.,

Respondents/Plaintiffs Below.

RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF PROHIBITION

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I. Introduction

The Petitioner alleges that venue is not proper in Mingo County, West Virginia because *W.Va. Code 17A-6A-1 et seq* does not provide for any cause of action against the Petitioner, thereby precluding application of the specific venue provision of *W.Va. Code § 17A-6A-12(3)*. However, this argument is clearly erroneous and ignores the plain language of *W.Va. Code 17A-6A-17* which provides for an action seeking injunctive relief by a "new motor vehicle dealer," such as the Respondent, against anyone allegedly committing any violation of *W.Va. Code 17A-6A-1 et seq.* Because the Respondent has articulated a claim for, and sought injunctive relief, pursuant to *W.Va. Code 17A-6A-17*, specifically alleging that the Petitioner has violated various articles of *W.Va. Code 17A-6A-1 et seq*, the specific venue provision of *W.Va. Code § 17A-6A-12(3)* controls and venue is proper in Mingo County. The Petitioner's argument is fatally flawed in that it requires the reading of a limitation of potential defendants/respondents in *W.Va. Code § 17A-6A-17* that is simply not contained in the plain language of the statute.

II. Issue Presented

A. Whether the Circuit Court of Mingo County, West Virginia erred in its *Order Denying Defendant's Motion to Dismiss* by finding that Mingo County is s proper venue for this action brought by Moore Chrysler, Inc. seeking to enforce protections afforded to a "new motor vehicle dealer" by *W.Va. Code § 17A-6A-1 et seq.*, and pursuant to the specific venue provision of *W.Va. Code § 17A-6A-12(3)*.

B. Whether the Petitioner knowingly and intentionally waived any right to the instant Petition for Writ of Prohibition by first attempting to "appeal," or re-litigate, the Circuit Court's June 29, 2021 Order to the Business Court Division, a co-equal trial court.

III. Statement of the case

Plaintiff and Respondent, Moore Chrysler, Inc. (hereinafter "Moore"), initiated the underlying action, pursuant to *W.Va. Code § 17A-6A-12(3)* when the Defendant and Petitioner, Thornhill Motor Car, Inc. d/b/a Thornhill Chrysler Dodge Jeep Ram (hereinafter "Thornhill") established its temporary new Chrysler Dodge Jeep Ram (hereinafter "CDJR") dealership, by shuttling its "sales trailer" and new car inventory, from 500 Stratton Street in downtown Logan, West Virginia transforming an otherwise vacant lot at the Fountain Place Mall adjacent to Route 119 in Logan, West Virginia; locating it within the "relevant market area" of Moore as defined by *W.Va. Code § 17A-6A-3(14). See Petitioner's App. 2-3, 16-17.* When the underlying suit was initiated, Thornhill made reference on its website to three separate addresses for its CDJR dealership, along with a fourth property utilized at 509 Dingess Street in downtown Logan, West Virginia for the purpose of service and repair of CDJR vehicles. *Id.* Upon information and belief, Thornhill has utilized the same "sales trailer" at each temporary location of its CDJR new car dealership and has never had an established place of business with a permanent commercial building.

Thornhill initially challenged venue in Mingo County, West Virginia by filing its Motion to Dismiss pursuant to Rule 12(b)(3) of the *West Virginia Rules of Civil Procedure. See App. 33-34.* Thornhill's Motion only sought to dismiss the Complaint based upon an alleged lack of venue and asserted no other challenges. *See App. 37-43.* Before Thornhill filed its Motion to Dismiss, Moore served written discovery on Thornhill by certificate of service dated March 4, 2021. *See Petitioner's App. 32.* On April 9, 2021, Moore's counsel sent a good faith letter to Thornhill's counsel requesting responses to the than overdue discovery, as Thornhill failed to timely respond to same or even acknowledge receipt of same. *See Petitioner's App. 55.* By correspondence of

April 12, 2021, counsel for Thornhill responded indicating that Thornhill would not respond to discovery while the Motion to Dismiss remained outstanding because:

> ...I do believe it would negatively interfere with the venue question pending before the Court.

See Petitioner's App. 56.

Based on this response, Thornhill's counsel either believed that a task as simple as responding to written discovery in accordance with the *West Virginia Rules of Civil Procedure* in the absence of any stay in the proceedings would waive a venue defense or it was merely a pretextual excuse to avoid answering discovery.

On May 11, 2021, the Court heard Thornhill's Motion to Dismiss. Ultimately, the Court found that the primary issue before the Court on Defendant's Motion to Dismiss was:

> ...whether the Court should apply the specific venue provision of W.Va. Code § 17A-6A-12(3) or West Virginia's general venue statute in determining whether the Circuit Court of Mingo County, West Virginia is a proper venue for the instant action.

See Petitioner's App. 134.

The Circuit Court ruled that nothing contained in *West Virginia Code* § 17A-6A-1 et seq. limited it to only suits between a new motor vehicle dealer and a manufacturer, as Thornhill had asserted that such a restriction did exists in the statute, and that the general venue statute, *West Virginia* Code § 56-1-1, is subordinate to specific venue statutes such as *West Virginia* Code §17A-6A-12(3). *See Petitioner's App. 136.* In its Order, the Court specifically noted that, while counsel for Thornhill asserted that he had personally written the subject statute[1], the Court rejected

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[1] Petitioner's counsel claimed authorship of the relevant statute during the hearing on May 11, 2021, asserting that "...and I know this, Your Honor, because I wrote the statute. I wrote it in 2015." *See Sup. App. 1-10.* After asserting in May 2021 that he had written the relevant statute (presumably on behalf of a client), during a hearing on September 28, 2021, Petitioner's counsel took the position that the twenty (20) mile geographic limitation in the statute is meaningless and to enforce it is farcical. Specifically, the following exchange occurred:

The Court: That's not what I am asking, though. What I'm asking is is the lot, in its current location, within or without outside the boundary lines that we're talking about?

Thornhill's position that the relevant statute only provided relief in a claim by a new motor vehicle dealer against a manufacturer. *Id.* Based upon those findings and conclusions of law, the Court denied Thornhill's Motion to Dismiss by Order of June 29, 2021. *Id.*

On July 8, 2021, Thornhill filed its Answer. *See Petitioner's App. 70.* Thereafter, rather than taking up the instant Writ, Thornhill next made a motion on July 8, 2021 to have this Court refer the matter to the Business Court Division. *See Petitioner's App. 74.* Thornhill delayed the filing of the Petition for Writ of Prohibition which was not filed until 126 days after the June 29, 2021 Order, and after this Court declined to refer the matter to the Business Court Division. Only when this Court denied Thornhill's Motion to refer this matter to the Business Court Division did Thornhill initiate the instant Writ. Based upon Thornhill's own representations, the goal of referring this matter before the Business Court Division was to "appeal" the circuit court's Order denying the Motion to Dismiss. Thornhill specifically represented that:

> The fact it [Thornhill] moved the Supreme Court to transfer the case to the Business Division where it [Thornhill] could then contest the [Circuit Court of Mingo County's] interpretation of the Franchise Law's venue provision cannot reasonably be seen to infer Thornhill is "judge shopping."

See Supp. App. 11-18.

This matter is now before this Court on Petitioner's Petition for Writ of Prohibition where the Petitioner seeks its "third bite" at the venue apple after it was denied in the Circuit Court of

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Mr. Brown: The twenty (20) mile limit, Your Honor?

The Court: Yes. Yes.

Mr. Brown: Judge, let me double check. I don't want to misrepresent anything to the Court. I think it's like nineteen point something miles outside. We're literally talking about a half mile here, so excuse me if I don't have a lot of sympathy or understanding about her damages, how a half mile is going to increase her damage. I find that a little farcical, if you don't mind me saying so. *See App. 170.*

Mingo County and its attempt to "appeal," or relitigate the issue, because its bid to transfer this matter to the Business Court Division failed.

IV. Summary of the Argument

A. The Circuit Court of Mingo County, West Virginia did not err in applying *West Virginia Code §17A-6A-12(3)* and finding venue in Mingo County, West Virginia.

The Circuit Court did not err in its application of *West Virginia Code §17A-6A-12(3)*, finding that the general venue statute, *West Virginia Code § 56-1-1*, is subordinate to the specific venue clause of *West Virginia Code §17A-6A-12(3)*.

Thornhill, in its argument both in its Motion to Dismiss and before this Court, relies, almost entirely upon *State ex rel. Thornhill Group, Inc. v. King, 233 W.Va. 564, 759 S.E.2d 795 (2014)* in asserting its position that the Circuit Court of Mingo County, West Virginia is an improper venue for the instant action. However, *State ex rel. Thornhill Group, Inc. v. King* relies upon the general venue statute to determine the venue of a case alleging breach of contract as well as other torts related to the alleged breach of contract. Moore Chrysler, Inc. brings an action to enforce *W.Va. § 17A-6A-1 et seq.*, a statute that specifically provides that the venue for this action is in the Circuit Court of Mingo County, West Virginia. Venue for the enforcement of *W.Va. § 17A-6A-1 et seq.*, is controlled by the specific venue provision of *W.Va. Code § 17A-6A-12(3)*.

Clearly, there is no conflict between the general venue statue and the specific venue provision contained in *W.Va. Code § 17A-6A-12(3)*. As a general rule, statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled. *See UMWA v Kingdon, 174 W.Va. 330, 332, 325 S.E.2d 120, 121 (1984). See also Barber v. Camden Clark Mem. Hosp. Corp., 240 W.Va. 663, 670, 815 S.E.2d 474, 481 (2018); Zimmer v. Romano, 223 W.Va. 769, 784, 679 S.E.2d 601, 616*

(2009); State ex rel. Tucker County Solid Waste Authority v. W.Va. Div. of Labor, 222 W.Va. 588, 598, 668 S.E.2d 217, 227 (2008).

In fact, *W.Va. Code § 56-1-1*, the general venue statute, clearly yields to *W.Va. Code § 17A-6A-12(3)* by providing that:

> (a) Any action or other proceeding, except where it is otherwise specifically provided, may hereafter be brought in the circuit court of any county:....

Thornhill argues that *W.Va. § 17A-6A-1 et seq.* is only applicable to suits between a "new motor vehicle dealer" and a manufacturer and/or distributor, thereby negating the specific venue clause of *W.Va. Code § 17A-6A-12(3)* with regard to this action. To accept Thornhill's argument, this Court would be required to read a restriction or limitation in *W.Va. Code § 17A-6A-17* that simply does not exist. Because Respondent is seeking injunctive relief, pursuant to *W.Va. Code § 17A-6A-17*, against Petitioner alleging a violation of the articles of *W.Va. § 17A-6A-1 et seq.*, the specific venue clause of W.Va. *Code § 17A-6A-12(3)* controls and the proper venue of this action in Mingo County, West Virginia.

"[I]t is the duty of this Court to avoid whenever possible construction of a statute which leads to absurd, inconsistent, unjust or unreasonable results." *Charter Comm. v. Community Antenna Services, Inc.*, 211 W.Va. 71, 77, 561 S.E.2d 793, 799 (2002). To read W.Va. *§ 17A-6A-17* to limit any potential action to only a new motor vehicle dealer against a manufacturer or distributor would read absurdity into the statute.

B. W.Va. Code § 17A-6A-17 places no restriction upon who may be sued for injunctive relief

One source of Respondent's right to injunctive relief is provided by *W.Va. Code §* 17A-6A-17, which provides that:

> Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancelation, nonrenewal or discontinuance of a dealer agreement ***or any other violation of this article***. The Court may grant injunctive relief or a temporary restraining order without bond. (emphasis added). W.Va. Code § 17A-6A-17.

W.Va. Code § 17A-6A-17 clearly identifies and limits who may bring an action for injunctive relief. Among those entitled to bring such claim is a "new motor vehicle dealer." Petitioner concedes that Moore is a "new motor vehicle dealer." While the statute limits who may bring a claim for injunctive relief under the statute, it places no litigation on who may be sued. Rather, the statute broadly permits a suit for injunctive relief to be brought for "...any other violation of this article." *Id.* The Respondent has alleged that Petitioner has violated an article of *W.Va. Code § 17A-6A-1 et al.*, therefore, pursuant to a plain reading of the statute, a cause of action by Respondent against the Petitioner is proper.

Clearly, had the drafters of the statute, in this case Thornhill's counsel, intended to limit the potential respondents to a Petition for Injunctive relief they could have placed limiting language in the statute, similar to the limiting language limiting who may bring such an action. Because Respondent is a proper Respondent/Defendant in an action brought pursuant to W.*Va. Code § 17A-6A-17*, the Circuit Court did not err by finding Mingo County, West Virginia to be a proper venue.

Because the Respondent is a "new motor vehicle dealer" bringing an action for injunctive relief pursuant to *W.Va. Code § 17A-6A-17*, for an alleged violation of the Articles of *W.Va. Code § 17A-6A-1 et al.*, the specific venue clause of *W.Va. Code § 17A-6A-12(3)* controls.

C. The Petitioner has waived its right to pursue the instant Petition for Writ of Prohibition

On June 29, 2021, the Circuit Court entered its Order denying the Petitioner's Motion to Dismissed. *See App. 136.* Upon entry of said Order, Thornhill could accept the Order and move forward or challenge the Order through a Petition for Writ of Prohibition. However, Thornhill elected to create a third option and seek an "appeal" of the Circuit Court's Order via the Business Court Division. *See App. 74. See also Supp. App. 11-18.* Only after Thornhill's attempts to "appeal" the Circuit Court's Order via a transfer to the Business Court Division, and 126 days after entry of the subject Order, did Thornhill file the instant Petition.

Upon receipt of the Circuit Court's Order of June 29, 2021, the Petitioner, represented by counsel, had actual knowledge of its right to pursue a Petition for a Writ of Prohibition regarding the Circuit Court's Order of June 29, 2021 and intentionally elected to relinquish that right to instead file its Motion to Refer to the Business Court Division, where Thornhill intended to contest, once again, the Circuit Court of Mingo County's interpretation of *W.Va. Code § 17A-6A-12(3).* Simply put, Thornhill waived its right to have immediately filed its Petition for a Writ of Prohibition but instead, and improperly, attempted to litigate its "appeal" of the June 29, 2021 Order before a Judge presiding over the Business Court Division. The Business Court Division is a co-equal trial court to the Circuit Court of Mingo County, West Virginia and not an intermediate appellate court.

V. Statement Regarding Oral Argument and Decision

The Respondent does not request oral argument at the Circuit Court clearly properly applied *W.Va. Code § 17A-6A-12(3).* The Petitioner knowingly and intentionally waived the instant Petition for Writ of Prohibition.

VI. Argument

A. Standard of Review

Petitioner has properly stated the Standard of Review as contained in Section V.A. of the Memorandum of Law in Support of Petition for Writ of Prohibition. Respondent does not however concede the conclusions contained in Petitioners arguments contained in Sections V.A.1-3; V.B. 1-2; or V.C.

1. The Petitioner's argument that a Writ of Prohibition is its only recourse is of no merit as the Petitioner has knowingly and intentionally waived the instant Writ of Prohibition.

Regarding the first element, this Court does not need to consider whether the Petitioner has other means of recourse as the Petitioner knowingly and intentionally waived the instant Writ of Prohibition when the Petitioner knowingly and intentionally elected to forgo the instant Petition for Writ of Prohibition and to instead pursue its "home brew appeal" by moving this Court to refer this matter to the Business Court Division, a co-equal trial court, where the Petitioner intended to appeal and/or relitigate the very issues resolved by the Circuit Court of Mingo County's Order of June 29, 2021. Even had this Court granted the motion to refer, the venue would have remained in the Circuit Court of Mingo County but with a presiding Judge from the Business Court Division. In short, the Petitioner, through its "home brew appeal" made the knowing and intentional decision to seek redress by seeking another Circuit Judge. Only when that failed, 126 days after the Order of June 20, 2021, did the Petitioner seek the instant Petition for Writ of Prohibition.

"The common-law doctrine of waiver focuses on the conduct of the party against whom waiver is sought and requires that party to have intentionally relinquished a known right. A waiver may be express or may be inferred from actions or conduct, but all of the attendant facts, taken together, must amount to an intentional relinquishment of a known right. There is no requirement

of prejudice or detrimental reliance by the party asserting waiver." Syl. Pt. 3 *Bruce McDonald Holding Co. v. Addinton, Inc., 241 W.Va. 451; 825 S.E.2d 779 (2019) citing Syl. Pt. 2 Parsons v. Halliburton Energy Servs., Inc., 237 W.Va. 138, 785 S.E.2d 844 (2016).*

"The essential elements of the doctrine of waiver are: (1) the existence of a right, advantage, or benefit at the time of the waiver; (2) actual or constructive knowledge of the existence of the right, advantage, or benefit; and (3) intentional relinquishment of such right, advantage, or benefit." *Id. at Syl. Pt. 4.*

It is without dispute that, to the extent the Petitioner has ever had any right to pursue a Petition for Writ of Prohibition, seeking relief from the Circuit Court's Order of June 29, 2021, such right came into existence upon entry of said Order. Petitioner's right to bring the instant Writ, if it ever had such right, was vested before July 12, 2021 when the Petitioner elected to forgo the instant Writ and instead pursued its "home brew" appeal through the Business Court Division, a co-equal trial court to the Circuit Court of Mingo County, West Virginia.

With regard to the third element, it is without question that the Petitioner intentionally relinquished its right to the instant Petition for Writ of Prohibition by pursuing the "home brew appeal" rather than moving forward with the instant Petition in July 2021.

As Petitioner is and was represented by competent counsel, it cannot be argued that the Petitioner was not aware of its right to Petition this Court for a Writ of Prohibition rather than to pursue the "home brew appeal" through the Business Court Division.

To find that the Petitioner had not waived its right to pursue the instant Petition would encourage parties to engage in procedural chicanery knowing that, if such mechanisms failed, they could always attempt a Petition for Writ of Prohibition after undue delay. However, Petitioner waived its right to pursue a Writ by admitting that its goal in moving to refer this matter to the

Business Court Division was to requests that the Business Court Division Judge reverse the decision of another co-equal trial court Judge. The Business Court Division is not an appellate court.

While Petitioner could have, arguably, moved the trial court to reconsider it's motion to dismiss under *Rule 60 of the West Virginia Rules of Civil Procedure*, it is clear that the Petitioner only intended to do so *after* causing the matter to be referred to the Business Court Division, with venue remaining in Mingo County, for the purpose of seeking to have a co-equal trail court Judge, sitting in the Circuit Court of Mingo County, West Virginia, reconsider the decision of the original trial Court Judge.

2. Petitioner will suffer not damages by this matter proceeding in the Circuit Court of Mingo County, West Virginia

Under this prong of the test, the Petitioner only asserts that it will be irreparable damaged because discovery will be conducted in the Circuit Court of Mingo County and not what the Petitioner deems to be the proper venue. This argument immediately fails as discovery in all Circuit Courts in the State of West Virginia are governed by the same rules of discovery as contained in the *West Virginia Rules of Civil Procedure*.

3. The Circuit Court of Mingo County, West Virginia did not err in its Order of June 29, 2021

As shown below, the Circuit Court of Mingo County, West Virginia properly applied the rules of statutory construction and properly ruled on the Petitioner's Motion to Dismiss. It is upon this factor that this Court is to place substantial weight and it weighs in favor of denying the Petitioner the relief requested.

B. The Circuit Court properly applied *W.Va. Code § 17A-6A-12(3)* because the Respondent is a proper party pursuant to *W.Va. Code § 17A-6A-17*

It is well-established that a statute's plain language should not be construed but should be applied as it is written. See Syl. pt. 3, *West Virginia Health Care Cost Review Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 472 S.E.2d 411 (1996) ("If the language of an enactment is clear and within the constitutional authority of the law-making body which passed it, courts must read the relevant law according to its unvarnished meaning, without any judicial embroidery."). This syllabus point is essentially application of the "omitted-case canon" of statutory interpretation (the Latin phrase *casus omissus pro omisso habendus est*).

Under the omitted-case canon of statutory interpretation, "[n]othing is to be added to what the text states or reasonably implies (casus omissus pro omisso habendus est). That is, a matter not covered is to be treated as not covered." *State ex rel. Lopez-Quintero v. Dittmann*, 2019 WI 58, ¶18, 387 Wis. 2d 50, 70, 928 N.W.2d 480, 490 (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 93 (2012)); see also *State v. Schultz*, 2020 WI 24, ¶52, 390 Wis. 2d 570, 608-09, 939 N.W.2d 519, 537-38; *Mich. Ambulatory Surgical Ctr. v. Farm Bureau Gen. Ins. Co.*, 2020 Mich. App. LEXIS 7790, *10, 334 Mich. App. 622, 965 N.W.2d 650, 2020 WL 6811671; *Villanueva v. State,* 200 So. 3d 47, 52 (Fla. 2016); *Woodford v. Commonwealth Ins. Dep't*, 243 A.3d 60, 85 (Pa. 2020); *People v. Pinkney*, 501 Mich. 259, 286 n.67, 912 N.W.2d 535, 549 (2018); *State v. I.C.S.,* 2013-1023 (La. 07/01/14), 145 So. 3d 350, 355; *Wilson Funeral Dirs., Inc. v. N.C. Bd. of Funeral Serv.,* 244 N.C. App. 768, 774, 781 S.E.2d 507, 511 (2016); *Williams v. Lakeview Loan Servicing LLC*, 509 F. Supp. 3d 676, 680 (S.D. Tex. 2020); *Envtl. Integrity Project v. United States EPA*, 969 F.3d 529, 541 (5th Cir. 2020). The principle at the core of the omitted-case canon of statutory interpretation has been recognized by the United States Supreme Court. See *Iselin v. United States*, 270 U.S. 245, 251, 46 S. Ct. 248,

250 (1926) ("To supply omissions transcends the judicial function"); *Lamie v. United States Tr.*, 540 U.S. 526, 538, 124 S. Ct. 1023, 1032 (2004) (rejecting construction that "would have us read an absent word into the statute" because it "would result not in a construction of the statute, but, in effect, an enlargement of it by the court" (citing *Iselin v. United States*)); *Hobbs v. McLean*, 117 U.S. 567, 579, 6 S. Ct. 870, 876 (1886) ("When a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe").

In enacting *W.Va. § 17A-6A-1*, the Legislature made the following specific findings:

> The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under their franchises and provide adequate and sufficient service to consumers generally, and to protect and preserve the investments and properties of the citizens and motor vehicle dealers of this state. *W.Va. § 17A-6A-1.*

Based upon the foregoing, it is clear that the Legislature not only viewed this as a public welfare statute but also contemplated that it was necessary to not only control the influence of manufactures on new motor vehicle dealers but to also ensure that new motor vehicle dealers lived up to their obligations.

One source of Respondent's right to injunctive relief is provided by *W.Va. Code § 17A-6A-17*, which provides that:

> Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancelation, nonrenewal or discontinuance of a dealer agreement ***or any other violation of this article***. The Court may grant injunctive relief or a temporary

> restraining order without bond. (emphasis added). W.Va. Code § 17A-6A-17.

W.Va. Code § 17A-6A-17 clearly identifies and limits who may bring an action pursuant to the statute but places no limitations upon who may be forced to respond to such action. Clearly, the drafters of the statute, here allegedly Thornhill's counsel, identified and limited three possible classes of petitioners to seek injunctive relief. However, rather than limiting who may be made a respondent in such action, the drafters limited the conduct that may be enjoined by an action pursuant to the statute, regardless of the status of the alleged violator of the statute.

In the underlying action, Moore has brought this action against Thornhill, seeking injunctive relief, alleging that Thornhill has violated *W.Va. Code § 17A-6A-12(3)*. Moore is clearly a "new motor vehicle dealer" and Thornhill concedes the same. Thornhill's definition or classification under the statute is irrelevant to the application of the statute. Moore is clearly seeking an injunction pursuant to *W.Va. Code § 17A-6A-17* for an alleged violation *of W.Va. Code § 17A-6A-12(3)*. Applying the allegations of Moore's claim to the plan language of the statute makes it clear that the specific venue clause of *W.Va. Code § 17A-6A-12(3)* controls and the Circuit Court did not err in finding venue in Mingo County, West Virginia.

A reading of the plain language of the statute places venue in Mingo County, West Virginia. Petitioner seeks to have this Court read a limitation into *W.Va. Code § 17A-6A-17* that is clearly no contained in the writing of the statute. The Petitioner is seeking "judicial embroidery" to create a limitation in the statute that is not contained in the statute to defeat the specific venue clause of *W.Va. Code § 17A-6A-12(3)*. Under the rules of statutory construction, this Court is to apply the statute as written, without the requested embellishments of the Petitioner. Therefore, it is proper for this Court to reject the Petitioner's argument and find venue in Mingo County, West Virginia.

VII. Conclusion

The Petitioner has waived its rights, if any, to the instant Writ by first seeking to "appeal" the Circuit Court's June 29, 2021 Order to a co-equal trial court Judge. The procedural chicanery in attempting cause this matter to be referred to the Business Court Division for the stated purpose of relitigating the motion to dismiss before a co-equal trial court Judge, sitting in the Circuit Court of Mingo County, West Virginia, is, at its very best a "home brew" appeal and, at its very worst, "judge shopping."

W.Va. Code § 17A-6A-17 provides for a cause of action by the Respondent against anyone, including the Petitioner, that is alleged to be violating any article of *W.Va. § 17A-6A-1et seq.* The Respondent has brought this action against the Petitioner, seeking injunctive relief pursuant to *W.Va. Code § 17A-6A-17* for the Petitioner's violation of *W.Va. § 17A-6A-1et seq.* Therefore, the specific venue clause of *W.Va. Code § 17A-6A-12(3)* controls and venue is properly in Mingo County, West Virginia.

WHEREFORE, fore the foregoing reasons, the Respondent, Moore Chrysler, Inc., respectfully moves this Court to refuse the Writ of Prohibition sought by the Petitioner and all other relief that this Court deems just and proper.

MOORE CHRYSLER, INC.,

By Counsel,

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Respondents/Plaintiffs Below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing **"Respondent's Response to Petitioner's Petition for Writ of Prohibition"** was served upon the following parties by U.S. Mail on this day, Tuesday, December 14, 2021:

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